

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

<b>ONOFRIO POSITANO,</b>	:	<b>CIVIL ACTION NO. 1:19-CV-1820</b>
	:	
<b>Plaintiff</b>	:	<b>(Chief Judge Conner)</b>
	:	
<b>v.</b>	:	
	:	
<b>OFFICE OF GOVERNOR, COMMONWEALTH OF PENNSYLVANIA, et al.,</b>	:	
	:	
<b>Defendants</b>	:	
	:	

**ORDER**

AND NOW, this 21st day of February, 2020, upon consideration of the report (Doc. 7) of Magistrate Judge Martin C. Carlson, issued following screening review of *pro se* plaintiff Onofrio Positano's complaint (Doc. 1), in which Judge Carlson recommends that the complaint be dismissed for failure to state a claim for which relief may be granted and recommends further that the court grant Positano leave to amend his complaint to attempt to cure the deficiencies identified in the report, (see Doc. 7 at 8-18), and the court noting that Positano filed objections (Doc. 11) to the report, see FED. R. CIV. P. 72(b)(2), and following *de novo* review of the contested portions of the report, see E.E.O.C. v. City of Long Branch, 866 F.3d 93, 99 (3d Cir. 2017) (quoting 28 U.S.C. § 636(b)(1)), and affording "reasoned consideration" to any uncontested portion, see id. (quoting Henderson v. Carlson, 812 F.2d 874, 878 (3d Cir. 1987)), the court finding Judge Carlson's analysis to be well-reasoned and fully supported by the record and the applicable law, and further

finding Positano's substantive objections (Doc. 11) to be without merit and squarely and correctly addressed by the report,<sup>1</sup> it is hereby ORDERED that:

1. The report (Doc. 7) of Magistrate Judge Carlson is ADOPTED.
2. Positano's complaint (Doc. 1) is DISMISSED without prejudice.
3. Positano is granted leave to amend his complaint in accordance with Judge Carlson's report within 20 days of the date of this order. Any amended pleading filed pursuant to this paragraph shall be filed to the same docket number as the instant action, shall be entitled "First Amended Complaint," and shall be complete in all respects. It shall be a new pleading which stands by itself as an adequate complaint under the Federal Rules of Civil Procedure, without reference to the complaint (Doc. 1) hereinabove dismissed.
4. In the absence of a timely filed amended complaint, the Clerk of Court shall close the above-captioned action. In the event a timely amended complaint is filed, this matter shall be remanded to Judge Carlson for further proceedings.
5. Any appeal from this order is deemed to be frivolous and not taken in good faith. See 28 U.S.C. § 1915(a)(3).

/S/ CHRISTOPHER C. CONNER  
Christopher C. Conner, Chief Judge  
United States District Court  
Middle District of Pennsylvania

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<sup>1</sup> We agree with Judge Carlson's legal conclusions—that Positano's claims for damages against the Office of the Governor and the Department of Corrections are barred by the Eleventh Amendment and that Positano fails to state a claim for which relief may be granted against Governor Wolf and Secretary Wetzel—and we adopt those conclusions in full. Positano also avers that Judge Carlson deprived him of due process and exhibited "judicial bias, indignation and antagonism" by, *inter alia*, granting Positano's motion to proceed *in forma pauperis* before he submitted the requisite authorization and by issuing a report recommending dismissal within one day of the complaint being docketed. (See Doc. 11 ¶ 2; Doc. 12 at 2-5). Because we ultimately agree with Judge Carlson's legal analysis, and because we are granting Positano an opportunity to amend his complaint, we conclude that any perceived due process or procedural errors are harmless.